U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28895668

Date: JAN. 16, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a designer of fashion and theater costumes for athletes and performers, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she met at least three of the regulatory criteria found at 8 C.F.R. § 204.5(h)(3), to be classified as an individual of extraordinary ability. We dismissed a subsequent appeal. The matter is now before us on a motion to reopen.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Our review on motion is limited to reviewing our latest decision. 8 C.F.R. § 103.5(a)(1)(ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits a statement explaining her personal circumstances, why she was unable to access and provide certain documentation, and reiterating why she believes that she qualifies as individual of extraordinary ability. She also asserts that our prior decision failed to consider new evidence submitted with her appeal, which was an error under 8 C.F.R. § 103.2(a)(1) and the Form I- 290B, Notice of Appeal or Motion's instructions.[1] She requests reopening of her prior appeal,

[1] With regards to her assertion that we erred by failing to consider the new evidence she submitted with her appeal, we note that the Petitioner filed a motion to reopen. Regardless, she has not explained why this was an error. Our prior decision declined to consider the new evidence because the Petitioner had been put on notice of the deficiencies in her

stating "I agree with the shortcomings of my petition, . . . but I ask you to consider my appeal . . . de novo . . .." She further contends that it was error not to consider her evidence as comparable evidence within the meaning of 8 C.F.R. § 204.5(h)(4) and claims, for the first time, that she meets the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x). She asks for compassion given her advanced age and because, as a Russian citizen, she is restricted from traveling to many countries.

As an initial matter, although a petitioner may supplement previous eligibility assertions, it should not raise previously unclaimed eligibility criteria for the first time on motion. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Therefore, we will not consider the Petitioner's new claims regarding the commercial success criterion or comparable evidence.[2]

In addition to her statement, she provides an email dated November 2020 from [redacted], General Secretary of the [redacted], and a portion of an article published in [redacted] magazine. As explained in our prior decision, the record does not contain evidence that membership in [redacted] requires outstanding achievements of their members. While we acknowledge the submission of the email, we note that only a portion of the Petitioner's request is included. Regardless, the response does not provide any information regarding the membership requirements of [redacted] or establish that they require outstanding achievements of their members. As such, the Petitioner has not established her eligibility under 8 C.F.R. § 204.5(h)(3)(ii). With respect to the article published in [redacted], although she has established that it is about her, it does not contain evidence to demonstrate that it is a professional or major trade publication, or other major media as required by the criterion found at 8 C.F.R. § 204.5(h)(3)(iii).

In sum, although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. Therefore, the motion will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

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evidence and had been given an opportunity to respond to that deficiency. Citing to precedent caselaw, we explained that because the Director's request for additional evidence (RFE) "spelled out the deficiencies in the evidence initially submitted and listed additional evidence which could be submitted to address those deficiencies, and the Petitioner responded with additional evidence," we would not consider the evidence submitted on appeal. The Petitioner's motion fails to explain how our analysis was made in error.

[2] As to the Petitioner's statements regarding comparable evidence, we agree that we may consider comparable evidence if we determine that the listed criteria do not readily apply to the Petitioner's occupation. *See generally*, 6 *USCIS Policy Manual* F.2, https://www.policymanual.com. However, it is the Petitioner's burden to establish not only that the criterion is not readily applicable to her occupation, but also that the submitted evidence is comparable to that criterion. *Id.* She has not done so here.